

# SENATE JOURNAL OF THE IDAHO LEGISLATURE

SECOND REGULAR SESSION  
FIFTY-NINTH LEGISLATURE

SIXTEENTH LEGISLATIVE DAY  
TUESDAY, JANUARY 22, 2008

Senate Chamber

President Risch called the Senate to order at 11:30 a.m.

Roll call showed all members present except Senator Burkett, absent and formally excused by the Chair.

Prayer was offered by Chaplain Goebel.

The Pledge of Allegiance was led by Nichole Ball, Page.

The Senate advanced to the Third Order of Business.

## Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 21, 2008, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

## Reports of Standing Committees

January 22, 2008

The JUDICIARY AND RULES Committee reports that **S 1316, S 1317, S 1318, S 1319, S 1320, S 1321, S 1322, and S 1323** have been correctly printed.

DARRINGTON, Chairman

**S 1316, S 1317, S 1318, S 1319, and S 1320** were referred to the Judiciary and Rules Committee.

**S 1321, S 1322, and S 1323** were referred to the State Affairs Committee.

January 22, 2008

The HEALTH AND WELFARE COMMITTEE reports it has had under consideration the Gubernatorial appointments listed below and the Committee recommends that said appointments be confirmed by the Senate:

Richard Roberge to the State Board of Health and Welfare, term to expire January 7, 2011.

Darrell Kerby, to the State Board of Health and Welfare, term to expire January 7, 2011.

LODGE, Chairman

The Gubernatorial appointments were referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

## Messages from the House

January 22, 2008

Mr. President:

I transmit herewith **HCR 34** which has passed the House.

ALEXANDER, Chief Clerk

**HCR 34** was filed for first reading.

The Senate advanced to the Tenth Order of Business.

## Motions and Resolutions

The President announced the State Affairs Committee report relative to the Gubernatorial appointment of Jim Kempton was before the Senate for final consideration, the question being, "Shall the report be adopted?"

On motion by Senator Darrington, seconded by Senator Stennett, the Gubernatorial appointment of Jim Kempton as a member of the Idaho Public Utilities Commission was confirmed by voice vote.

The President declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The Senate advanced to the Eleventh Order of Business.

## Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

**S 1324**

**BY JUDICIARY AND RULES COMMITTEE  
AN ACT**

RELATING TO NONPROBATE TRANSFERS; AMENDING CHAPTER 6, TITLE 15, IDAHO CODE, BY THE ADDITION OF A

NEW PART 4, CHAPTER 6, TITLE 15, IDAHO CODE, TO PROVIDE FOR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IN REAL PROPERTY AND TO PROVIDE FOR TERMINATION OF COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IN REAL PROPERTY.

**S 1325**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO APPOINTMENT OF CONSERVATORS; AMENDING SECTION 15-5-410, IDAHO CODE, TO REVISE THE PRIORITY OF WHO MAY BE APPOINTED CONSERVATOR AND TO MAKE TECHNICAL CORRECTIONS.

**S 1326**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS; AMENDING SECTIONS 15-9-101, 15-9-201, 15-10-101, 15-10-201 AND 15-11-101, IDAHO CODE, TO PROVIDE FOR JURISDICTION FOR A DEVELOPMENTALLY DISABLED PERSON; AND AMENDING CHAPTER 4, TITLE 66, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 66-415, 66-416 AND 66-417, IDAHO CODE, TO PROVIDE FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP OR CONSERVATORSHIP, TO PROVIDE FOR TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO A FOREIGN JURISDICTION AND TO PROVIDE FOR TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIP OR CONSERVATORSHIP OF DEVELOPMENTALLY DISABLED PERSON.

**S 1327**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO PROTECTION OF PERSONS UNDER DISABILITY; AMENDING SECTION 15-5-308, IDAHO CODE, TO REVISE THE INFORMATION TO BE INCLUDED IN THE VISITOR'S REPORT AND TO PROVIDE THE VISITOR WITH CERTAIN DISCRETIONARY AUTHORITY; AMENDING SECTION 15-5-311, IDAHO CODE, TO REVISE THE PRIORITY FOR APPOINTMENT AS GUARDIAN FOR PERSONS WHO ARE NOT DISQUALIFIED, TO PROVIDE FOR RESTRICTIONS AGAINST CERTAIN PERSONS BEING APPOINTED AS GUARDIAN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-312, IDAHO CODE, TO REVISE GUARDIAN POWERS AND DUTIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-316, IDAHO CODE, TO PROVIDE THE GUARDIAN AD LITEM CERTAIN DISCRETIONARY AUTHORITY; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

**S 1328**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO FORMAL TESTACY PROCEEDINGS; AMENDING SECTION 15-3-403, IDAHO CODE, TO REMOVE A NOTICE BY PUBLICATION REQUIREMENT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-3-412, IDAHO CODE, TO CORRECT A CODE REFERENCE AND TO MAKE TECHNICAL CHANGES.

**S 1329**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO EXEMPT PROPERTY AND ALLOWANCES; AMENDING SECTION 15-2-401, IDAHO CODE, TO REMOVE A REFERENCE TO THE HOMESTEAD ALLOWANCE; REPEALING SECTION 15-2-402, IDAHO CODE, RELATING TO HOMESTEAD ALLOWANCE; AMENDING SECTION 15-2-403, IDAHO CODE, TO REMOVE REFERENCES TO THE HOMESTEAD ALLOWANCE, TO PROVIDE FOR AN ALLOWANCE FOR CERTAIN TANGIBLE PERSONAL PROPERTY, TO REMOVE PROVISIONS DEALING WITH ENCUMBERED CHATTELS AND DEFICIENCIES OF EXEMPT PROPERTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-2-404, IDAHO CODE, TO PROVIDE FOR A CERTAIN FAMILY ALLOWANCE FOR THE DECEDENT'S SURVIVING SPOUSE AND DISABLED, MINOR CHILDREN, TO REMOVE A CALCULATION FOR A FAMILY ALLOWANCE, TO REMOVE REFERENCES TO THE HOMESTEAD ALLOWANCE, TO PROVIDE A REFERENCE TO EXEMPT PROPERTY, TO REMOVE REFERENCE TO DEPENDENT CHILDREN, TO PROVIDE REFERENCE TO DISABLED CHILDREN AND TO REMOVE A PROVISION REGARDING THE CHARGE OF THE FAMILY ALLOWANCE AGAINST ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN BY WILL; AMENDING SECTION 15-2-405, IDAHO CODE, TO PROVIDE A CODE REFERENCE, TO REMOVE REFERENCES TO THE HOMESTEAD ALLOWANCE, TO REMOVE REFERENCES TO THE FAMILY ALLOWANCE, TO REMOVE A PROVISION FOR A CERTAIN LUMP SUM FAMILY ALLOWANCE AND TO REMOVE A PROVISION PERMITTING A PERSONAL REPRESENTATIVE OR CERTAIN INTERESTED PERSONS TO PETITION THE COURT FOR A CERTAIN FAMILY ALLOWANCE; AMENDING CHAPTER 2, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-2-406, IDAHO CODE, TO PROVIDE FOR LIMITATIONS ON EXEMPT PROPERTY AND FAMILY ALLOWANCE BY WILL; AND AMENDING SECTION 56-218, IDAHO CODE, TO REMOVE PROVISIONS DEALING WITH PETITIONING THE COURT FOR AN EXEMPT PROPERTY ALLOWANCE CLAIM UNDER CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS.

**S 1330**

**BY JUDICIARY AND RULES COMMITTEE**  
AN ACT

RELATING TO EXEMPT PROPERTY AND ALLOWANCES; AMENDING SECTION 15-2-403, IDAHO CODE, TO PROVIDE FOR AN ALLOWANCE FOR CERTAIN TANGIBLE PERSONAL PROPERTY AND TO REMOVE PROVISIONS DEALING WITH ENCUMBERED CHATTELS AND DEFICIENCIES OF EXEMPT PROPERTY; AMENDING CHAPTER 2, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-2-406, IDAHO CODE, TO PROVIDE LIMITATIONS ON EXEMPT PROPERTY AND FAMILY ALLOWANCE BY WILL; AND AMENDING SECTION 56-218, IDAHO CODE, TO REMOVE PROVISIONS DEALING WITH PETITIONING THE COURT FOR AN EXEMPT PROPERTY ALLOWANCE CLAIM UNDER CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS.

**S 1331****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-214, IDAHO CODE, TO REMOVE A PROVISION RELATING TO THE TRANSFER OF AN ASSET IN THE FORM OF AN ANNUITY AND TO PROVIDE THAT, SUBJECT TO CERTAIN EXCEPTIONS, THE TRANSFER OF ANY ASSET NOT FOR FAIR MARKET VALUE IS PRESUMED TO BE FOR THE PURPOSE OF SHELTERING ASSETS TO QUALIFY FOR MEDICAL ASSISTANCE.

**S 1332****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO NOTICE IN PROBATE PROCEEDINGS; AMENDING SECTION 15-1-401, IDAHO CODE, TO REMOVE A GENERAL REQUIREMENT FOR PUBLICATION OF NOTICE IN A NEWSPAPER HAVING GENERAL CIRCULATION, TO PROVIDE A GENERAL REQUIREMENT FOR PUBLICATION OF NOTICE IN A NEWSPAPER OF GENERAL INTEREST AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-3-801, IDAHO CODE, TO REMOVE A REQUIREMENT FOR PUBLICATION OF NOTICE TO CREDITORS IN A NEWSPAPER OF GENERAL CIRCULATION AND TO PROVIDE FOR PUBLICATION OF NOTICE TO CREDITORS IN A NEWSPAPER OF GENERAL INTEREST.

**S 1333****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO WILLS; AMENDING SECTION 15-2-502, IDAHO CODE, TO PROVIDE CERTAIN EXCEPTIONS TO THE EXECUTION OF WILLS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-2-504, IDAHO CODE, TO PROVIDE FOR THE EXECUTION, MAKING AND ATTESTING OF SELF-PROVED WILLS AND TO MAKE TECHNICAL CORRECTIONS.

**S 1334****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO REAL AND PERSONAL PROPERTY; AMENDING SECTION 55-111, IDAHO CODE, TO REMOVE PROVISIONS DEALING WITH THE POWER OF ALIENATION OF REAL PROPERTY AND ANY RULE PROHIBITING THE PLACING OF RESTRAINTS ON THE ALIENATION OF PERSONAL PROPERTY AND TO REVISE DESCRIPTIVE LANGUAGE; AND AMENDING CHAPTER 1, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-111A, IDAHO CODE, TO PROVIDE FOR SUSPENSION OF POWER OF ALIENATION AND TO PROVIDE FOR FUTURE INTEREST BY POWER OF APPOINTMENT.

**S 1335****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO THE UNIFORM POWER OF ATTORNEY ACT; REPEALING PART 5, CHAPTER 5, TITLE 15, IDAHO CODE, RELATING TO POWERS OF ATTORNEY;

AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 12, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR APPLICABILITY, TO PROVIDE FOR DURABILITY OF POWER OF ATTORNEY, TO PROVIDE FOR EXECUTION OF POWER OF ATTORNEY, TO PROVIDE FOR VALIDITY OF POWER OF ATTORNEY, TO PROVIDE FOR MEANING AND EFFECT OF POWER OF ATTORNEY, TO PROVIDE FOR NOMINATION OF CONSERVATOR AND FOR RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY, TO PROVIDE FOR WHEN POWER OF ATTORNEY IS EFFECTIVE, TO PROVIDE FOR TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY, TO PROVIDE FOR COAGENTS AND SUCCESSOR AGENTS, TO PROVIDE FOR REIMBURSEMENT AND COMPENSATION OF AGENT, TO PROVIDE FOR AGENT'S ACCEPTANCE, TO PROVIDE FOR AGENT'S DUTIES, TO PROVIDE FOR EXONERATION OF AGENT, TO PROVIDE FOR JUDICIAL RELIEF, TO PROVIDE FOR AGENT'S LIABILITY, TO PROVIDE FOR AGENT'S RESIGNATION AND FOR NOTICE, TO PROVIDE FOR ACCEPTANCE OF AND RELIANCE UPON AN ACKNOWLEDGED POWER OF ATTORNEY, TO PROVIDE LIABILITY FOR REFUSAL TO ACCEPT AN ACKNOWLEDGED POWER OF ATTORNEY, TO PROVIDE FOR PRINCIPLES OF LAW AND EQUITY, TO PROVIDE FOR LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND ENTITIES, TO PROVIDE FOR REMEDIES UNDER OTHER LAW, TO PROVIDE FOR AUTHORITY THAT REQUIRES SPECIFIC GRANT AND FOR GRANT OF GENERAL AUTHORITY, TO PROVIDE FOR INCORPORATION OF AUTHORITY, TO PROVIDE FOR CONSTRUCTION OF AUTHORITY GENERALLY, TO PROVIDE FOR AUTHORITY REGARDING REAL PROPERTY, TO PROVIDE FOR AUTHORITY REGARDING TANGIBLE PERSONAL PROPERTY, TO PROVIDE FOR AUTHORITY REGARDING STOCKS AND BONDS, TO PROVIDE FOR AUTHORITY REGARDING COMMODITIES AND OPTIONS, TO PROVIDE FOR AUTHORITY REGARDING BANKS AND OTHER FINANCIAL INSTITUTIONS, TO PROVIDE FOR AUTHORITY REGARDING OPERATION OF AN ENTITY OR BUSINESS, TO PROVIDE FOR AUTHORITY REGARDING INSURANCE AND ANNUITIES, TO PROVIDE FOR AUTHORITY REGARDING ESTATES, TRUSTS AND OTHER BENEFICIAL INTERESTS, TO PROVIDE FOR AUTHORITY REGARDING CLAIMS AND LITIGATION, TO PROVIDE FOR AUTHORITY REGARDING PERSONAL AND FAMILY MAINTENANCE, TO PROVIDE FOR AUTHORITY REGARDING BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE, TO PROVIDE FOR AUTHORITY REGARDING RETIREMENT PLANS, TO PROVIDE FOR AUTHORITY REGARDING TAXES, TO PROVIDE FOR AUTHORITY REGARDING GIFTS, TO PROVIDE FOR STATUTORY FORM POWER OF ATTORNEY, TO PROVIDE FOR AGENT'S CERTIFICATION FORM, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE FOR EFFECT ON EXISTING POWERS OF ATTORNEY; AND AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

**S 1336****BY JUDICIARY AND RULES COMMITTEE****AN ACT**

RELATING TO THE INTELLECTUAL PROPERTY POWER OF ATTORNEY ACT; AMENDING TITLE 15, IDAHO CODE, BY THE

ADDITION OF A NEW CHAPTER 13, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR CONSTRUCTION, TO PROVIDE FOR LAW AND EQUITY SUPPLEMENTAL TO THE CHAPTER, TO DEFINE A TERM, TO PROVIDE FOR AN INTELLECTUAL PROPERTY POWER OF ATTORNEY AND TO PROVIDE FOR POWER OF ATTORNEY IN WRITING.

**S 1324, S 1325, S 1326, S 1327, S 1328, S 1329, S 1330, S 1331, S 1332, S 1333, S 1334, S 1335, and S 1336** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

**HCR 34**, by State Affairs Committee, was introduced, read at length, and referred to the State Affairs Committee.

The Senate advanced to the Twelfth Order of Business.

#### **Second Reading of Bills**

**S 1308 and S 1309**, by Finance Committee, were read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

#### **Miscellaneous Business**

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 11:56 a.m. until the hour of 11:30 a.m., Wednesday, January 23, 2008.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary